

SECTION II
REMARKS

Regarding the Amendments

Claims 1, 30 and 54 have been amended as set forth in the above Complete Listing of the Claims. As amended, the claims are supported by the specification and the original claims and do not add new matter, as defined by 35 U.S.C. § 132.

Specifically the amendment to claim 1 is supported by the original text of claim 8, the amendment to claim 30 is supported by the original text of claim 36, and the amendment to claim 54 is supported by the original text of claim 56.

The amendments to the claims do not require a new search, or raise new issues for consideration. It is submitted that the amendments place the claims in condition for allowance or in better condition for appeal by reducing the number of issues for consideration on appeal. The amendments were not made earlier in the prosecution because it is maintained that the previously pending claims were allowable. Since the amendments do not add new matter or require a new search or consideration, and place the claims in condition for allowance or in better condition for appeal, entry of the amendment is respectfully requested.

By the present amendment, cancellation of claims 8, 36, 43-46 and 56 is requested, without prejudice. Claims 8, 36 and 56 are cancelled so as not to duplicate the subject matter of amended claims 1, 30 and 54, respectively. Claims 43-46 are cancelled as non-elected claims, as provided in the Response mailed February 12, 2008.

Thus, upon entry of the amendments, claims 1-7, 9, 30-35, 37-42, 47-55, and 57-58 will be pending.

Regarding the Restriction Requirement

The Office Action mailed April 30, 2008 lists the pending claims as 1-9, 30-42 & 47-58. It is noted that in Response to the Office Action of January 16, 2008, applicants elected Group I, claims 1-9, 30-42, and 47-58. Claims 43-46, while nonelected, had not been canceled prior to the present action.

Rejection of Claims Under 35 U.S.C. §103

The examiner has rejected claims 1-9, 30-42, 54, 55, and 58 under 35 U.S.C. § 103(a) as being unpatentable over Published U.S. Patent Application No. 2004/0059205 (hereinafter Carlson et al.) in view of U.S. Patent No. 5,365,217 (hereinafter Toner).

Additionally, the examiner has rejected claims 47-53, 56 and 57 under 35 U.S.C. § 103(a) as being unpatentable over Carlson et al. in view of Toner and further in view of Published U.S. Patent Application No. 2005/0094705 (hereinafter Chi). Applicants respectfully disagree with both rejections.

Initially it is noted that the earliest priority date for Chi is November 5, 2005, the date of filing of the parent EP publication. The present application, however, has a priority PCT filing date of July 17, 2003. As such, Chi is not available as a prior art reference under 35 U.S.C. §§ 102 or 103. While Carlson et al. and Toner have priority dates prior to that of the present application, it is respectfully submitted that all of pending claims 1-9, 30-42, and 47-58 are patentable in view of the combination of Carlson et al. and Toner.

It is elemental law that in order for an invention to be obvious, the difference between the subject matter of the application and the prior art must be such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art. In order to meet this standard for a proper §103 rejection, all claim limitations must be disclosed or derivable from the cited combination of references, there must be a logical reason to combine the cited references to produce an operable combination and there must be a reasonable expectation of success. (MPEP § 2143.03)

Carlson et al. in view of Toner fail to provide any derivative basis for the claimed invention. Accordingly, no basis of *prima facie* obviousness of the claimed invention is presented by such cited references.

As amended, independent claims 1, 30, 47 and 54 all contain the aspect that the physiological parameter reading be adjusted to include a physiological parameter correction factor that is individually determined for the first person. It is submitted that the cited combination of Carlson et al. and Toner does not disclose such an aspect. In fact, such is acknowledged by the examiner at page 8 of the Office Action mailed April 30, 2008, “[f]urthermore, Carlson et al. and Toner disclose body temperature measurement via body-worn sensors, however are silent as to correction factors determined for the person” (emphasis added). As such, the combination of

Carlson et al. and Toner does not render independent claims 1, 30, 47 and 54 obvious.

Each of the remaining pending claims depends from one of claims 1, 30, 47 and 54. By definition, a dependent claim refers back to and further limits the independent claim. Therefore, dependent claims contain all limitations of the independent claims from which they depend. As such, the cited combination of Carlson et al. and Toner does not render any of pending claims 1-7, 9, 30-35, 37-42, 47-55, and 57-58 obvious.

As Carlson et al. in view of Toner does not provide any logical basis for the method and systems recited in claims 1-7, 9, 30-35, 37-42, 47-55, and 57-58, Carlson et al. in view of Toner does not render the claimed invention obvious. Accordingly, withdrawal of the rejection of claims 1-9, 30-42, and 47-58 under 35 U.S.C. §103(a) as being obvious over Carlson et al. in view of Toner is respectfully requested.

CONCLUSION

Based on the foregoing, all of Applicants' pending claims 1-7, 9, 30-35, 37-42, 47-55, and 57-58 are patentably distinguished over the art, and are in form and condition for allowance. The Examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

The time for responding to the April 30, 2008 Office Action without extension was set at three months, or July 30, 2008. This response is therefore timely and no fees are believed to be due for the filing of this paper. However, should any fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the Examiner is requested to contact the undersigned attorney at (919) 419-9350 to discuss same.

Respectfully submitted,

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